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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-149
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	
	)	
Petition of MCI Telecommunications Corp.	)	

BELL ATLANTIC AND NYNEX OPPOSITION TO MCI PETITION

Earlier in this proceeding, MCI advanced interpretations of section 272 that would have read the joint marketing restriction out of the statute, and the Commission correctly rejected MCI's arguments. Having been unsuccessful before, MCI is now back asking the Commission to limit the statutory restriction through a declaratory ruling relating to specific MCI advertisements. The Commission should reject MCI's petition and its latest erroneous interpretations of the Act.

As a preliminary matter, the Commission does not need to reject MCI's legal arguments to conclude that MCI's marketing practices violate the Act, as those arguments do not purport to justify one of the advertisements attached to MCI's Petition. In that ad, MCI expressly promotes both its "unlimited local and local toll calling" and its "long distance" service "to everyone in the U.S."[1] The ad also gives the reader a single telephone number to call and tells her that "[j]oining MCI is quick and easy," clearly

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[1] MCI Pet. Ex. A, second advertisement (filed May 1, 1997). We understand the local service MCI is promoting in this ad is resold local service; otherwise MCI would not have attached it to its petition and asked the Commission to approve it.

suggesting that she can buy the advertised local and long distance services with that one call. It is hard to imagine a clearer violation of the statute.[2]

MCI misconstrues the Act and the Commission's Rules in two important respects. Section 272(e)(1) broadly prohibits MCI from "jointly marketing" its interLATA services and with resold local services. The statute does not limit the restriction in any way or to prescribe only certain, specific conduct. This broad prohibition is repeated in section 53.100(a) of the Commission's Rules.[3] MCI, however, tells the Commission that MCI's marketing activities are subject to "only [five] express constraints" and argues against "expansion" of the restriction beyond these five items.[4] While these five activities do fall within the joint marketing restriction, MCI is plainly incorrect when it claims that this is an exhaustive list of prohibited activities. MCI's marketing activities are subject to the broad prohibition contained in the statute and the regulations, and it would not constitute an "expansion" of the restriction to enforce the statute and Rules as written.[5]

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[2] MCI may not mislead consumers by advertising "that it can provide 'one-stop shopping' of both services through a single transaction." *Implementation of the Non-Accounting Safeguards of Section 271 and 272*, First Report and Order, CC Docket No. 96-149, ¶ 280 (rel. Dec. 24, 1996) ("Non-Accounting Safeguards Order").

[3] Like the statute, this section says that MCI "may not jointly market" these services.

[4] MCI Pet. at 3.

[5] This is not the only time MCI misrepresents the rules. The Commission authorized carriers to provide "joint customer care" after a customer subscribes to both long distance and local service from that carrier. The Commission defined joint customer care as "a single bill for both BOC resold local services and interLATA services, and a single point-of-contact for maintenance and repairs." Non-Accounting Safeguards Order ¶ 281. MCI's recitation of this definition inexplicably adds "and other customer services" to this list. MCI Petition at 4.

MCI is also incorrect when it argues that its marketing of local service to its existing long distance customers "could not constitute prohibited joint marketing in any event."[6] This is nonsense. If MCI, for example, offered existing long distance customers a bundled package that included resold local service, MCI would plainly violate both the statute and section 53.100(b)(2) of the Rules.[7]

Moreover, MCI's claim that winning a customer for one service makes the joint marketing restriction inapplicable as to that customer is inconsistent with the purpose of that restriction. Congress imposed this restriction because it "believe[d] that the ability to bundle telecommunications, information, and cable services into a single package to create 'one-stop- shopping' will be a significant competitive marketing tool,"[8] and that the Big Three interexchange carriers should not have that tool before the Bell companies could match their offerings. As the Commission has recognized, the advantage of providing 'one-stop shopping' does not end at the time of the first sale. "If it is advantageous for a new customer to engage in one-stop shopping, it is likewise advantageous for an existing customer to do the same."[9] The Commission should make it clear to MCI that the joint marketing prohibition applies to all customers.

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6 MCI Pet. at 7.

7 The Commission did conclude that covered interexchange carriers could provide "joint customer care," but this is expressly limited to the time "after a potential customer subscribes to *both* interLATA and BOC resold local services from a covered interexchange carrier." Non-Accounting Safeguards Order ¶ 281 (emphasis added).

8 S. Rep No. 23, 104th Cong., 1st Sess., 23 (1995).

9 *Applications of Craig O. McCaw, Transferor, and AT&T, Transferee*, 10 FCC Rcd 11786, 11795 (1995).

Conclusion

The Commission should deny MCI's petition.

Respectfully submitted,

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Dated: June 9, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 1997 a copy of the foregoing "Bell Atlantic and NYNEX Opposition to MCI Petition" was sent by first class mail, postage prepaid, to the parties on the attached list.

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